

### **REMARKS**

Claims 1-20 and 31-35 are now pending in the application. Claims 1, 12 and 31 have been amended. The basis for the foregoing amendments may be found throughout the written description, drawings, and claims as originally filed. The Examiner is respectfully requested to reconsider and withdraw the rejection(s) in view of the amendments and remarks contained herein.

### **EXAMINER INTERVIEW**

Applicant thanks the Examiner for the courtesy extended during an Examiner Interview on January 11, 2007. During the interview, Applicant's attorney and the Examiner discussed the pending claims of record in view of the prior art. Applicant's attorney discussed with the Examiner novel features provided in the instant invention over the art of record. Specifically, one point of novelty includes a resecting member adapted to translate in a direction generally along a longitudinal axis of the bone and generally proximate to said positioning member during resection of the selected bone portion. Furthermore, the instant invention provides a spacer adapted to be disposed between the bone and the first guiding member during resection and operable to limit translation of the resecting tool during resection. As a result of the Examiner Interview, these points of novelty have been included in the amended claims. In this way, the amendments have been made merely to clarify the invention and should not necessitate a new search.

### **CLAIM OBJECTION**

Claim 1 stands objected to for an informality. Applicant has non-narrowly amended the claim according to the Examiner's suggestions. Therefore, reconsideration and withdrawal of this objection is respectfully requested.

### **REJECTION UNDER 35 U.S.C. § 102**

Claims 1-3, 8-9, 12-20, and 31-33 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 4,952,213 (Bowman). This rejection is respectfully traversed.

At the outset, Applicant notes that all independent claims 1, 12 and 31 have been amended to more clearly recite the relationship between the resecting tool and the positioning member. More specifically, claims 1, 12 and 31 have been amended to recite "a resecting member adapted to translate in a direction generally along a longitudinal axis of the bone and generally proximate to said positioning member (rod) during resection of the selected bone portion". As discussed during the Examiner Interview, the entire positioning member assembly of Bowman must be removed prior to cutting (i.e. see FIG. 4 of Bowman). As a result, Bowman cannot teach a resecting member that translates in a direction generally along a longitudinal axis of the bone and generally proximate to the positioning member during resection. Furthermore, Bowman does not show a resecting member that is adapted to translate in a direction generally along the longitudinal axis of the bone. Saw 186 (FIG. 4 of Bowman) is adapted to cut generally transverse to the longitudinal axis of the bone and further is incapable of cutting along a longitudinal axis of bone.

Applicant notes that claims 12 and 31 have been amended to more clearly recite the relationship of the spacer and the first guiding member. Specifically, claims 12 and 31 have been amended to recite “a spacer adapted to be disposed between the bone and the first guiding member during resection”. As discussed during the Examiner Interview, the Examiner has identified the bone engaging section 144 of Bowman as a “spacer”. Assuming the bone engaging section 144 acts as a spacer, the bone engaging section of Bowman cannot be “disposed between the bone and the first guiding member during resection” because the bone engaging section 144 of Bowman must be removed prior to cutting (i.e. see FIG. 4 of Bowman). Accordingly, independent claims 1, 12 and 31 along with their corresponding dependent claims are not anticipated or rendered obvious by Bowman. Therefore, Applicant respectfully requests withdrawal of the rejection.

#### **REJECTION UNDER 35 U.S.C. § 103**

Claims 6-7 and 10-11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bowman in view of U.S. Pat. No. 5,409,489 (Sioufi). This rejection is respectfully traversed. Sioufi provides a surgical instrument 10 for cone-shaped sub-trochanteric rotational osteotomy. A guide 1 is fixed to a cervical screw 7 which has been previously inserted into a femoral head along the axis to the cone to be cut (FIG. 1). The drill bit 23 penetrates the lateral wall of the femur M as close as possible to the cervical screw 7. Cutting of the cone is achieved by lateral displacement of the drill bit 23 in a circular motion.

Sioufi does not teach or suggest a positioning member adapted to be fixed relative to the selected bone and a guiding member rotatably extending from the positioning member. Furthermore, Sioufi does not teach or suggest a guiding member adjustably securable in a first position enabling resection of a first portion of the bone and a second position enabling resection of a second portion of the bone. Moreover, Sioufi does not teach or suggest a resecting member adapted to translate in a direction generally along a longitudinal axis of the bone during resection of the selected bone portion. Sioufi also does not teach or suggest a resecting member that is adapted to adjustably position at a first angle relative to an axis of the positioning member in the first position and second angle relative to the axis of the positioning member in the second position wherein the first position and first angle is distinct from the second position and second angle, respectively. Therefore, Applicant respectfully request withdrawal of the rejection.

Moreover, Applicant notes that claims 6-7 and 10-11 all ultimately depend from claim 1. Applicant respectfully submits, in view of at least the above discussion, claims 1, 6-7, and 10-11 are not anticipated or rendered obvious by Bowman and Sioufi alone or in combination. Therefore, Applicant respectfully requests withdrawal of the rejection.

## CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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